

# Notice of Allowability

Application No.

10/659,090

Examiner

Mark Kopec

Applicant(s)

NAGEL, CHRISTOPHER J.

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1.132 Dec/Remarks filed 08/22/06 and Int. Summ. of 10/2/06.
2. ☒ The allowed claim(s) is/are 1-6,8,14 and 27.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
Mark Kopec  
Primary Examiner

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This action is responsive to applicant's 1.132 Declaration and Remarks filed 08/22/06. Claims 1-42 are pending.

The 1.132 Declaration filed 08/22/06 is entered. Note that a full copy of the Declaration, including the submitted color pages, has been placed in "Artifact File".

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

At **page 1** of the specification, line 3, delete "U.S. Serial No. 10/123,228, filed April 12, 2002" and replace with --U.S. Serial No. 10/123,028, filed April 12, 2002, now U.S. Patent No. 6,921,497, --.

Rewrite **claim 1** as follows:

--1. A copper composition manufactured by exposing a starting copper composition with a purity of at least about 99.98% to an iterative cyclic process in the presence of a carbon source, wherein the manufactured copper composition is substantially free of other metals, and characterized by one or more spots of

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magnetic attraction to a neodymium iron boron magnet on the surface of the composition at room temperature.---

Rewrite **claim 6** as follows:

- 6. A copper composition manufactured by exposing a starting copper composition with a purity of at least about 99.98% to an iterative cyclic process in the presence of a carbon source, wherein the copper composition is substantially free of other metals, and characterized by point attraction to iron filings at or near 77K.--.

Rewrite **claim 14** as follows:

- 14. A composition comprising a transition metal element or silicon characterized by an X-ray fluorescence analysis report wherein the report recites the presence of an element in the periodic table wherein said composition has not been in contact with said element and is manufactured by exposing a starting composition to an iterative cyclic process in the presence of a carbon source.--.

Rewrite **claim 27** as follows:

- 27. A composition comprising a transition metal element or silicon characterized by an X-ray fluorescence analysis wherein the analysis recites an emission detected at room temperature indicating the presence of an element in the periodic table wherein said composition has not been in contact with said element and is manufactured by exposing a

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starting composition to an iterative cyclic process in the presence of a carbon source.--.

**Cancel claims 7, 9-13, 15, 16, 28, 29, 31-42.**

Authorization for this examiner's amendment was given in a telephone interview with Carolyn S. Elmore on 10/02/06.

The following is an examiner's statement of reasons for allowance:

The 1.132 Declaration and accompanying remarks are sufficient to overcome the pending rejections.

With respect to instant claims 1-5, 6 and 8, applicant has demonstrated that the claimed magnetic properties have been observed (to at least some extent) in four of the five inventive examples utilizing  $\geq 99.98\%$  pure copper as a starting material. Support for this limitation appears (at least) in Examples 1 and 11-14. The 1.132 Declaration clearly discloses radial magnetic attraction to a Nd/B/Fe magnet (at 298K) and attraction to Fe filings (at 77K). After careful consideration of the evidence as a whole, the examiner agrees applicant has demonstrated that the disclosure, as filed, would have enabled the claimed invention for one skilled in the art at the time of filing.

With respect to the prior art rejections over these claims, each of the reference relied upon teaches Cu-Fe alloys with

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varying amounts of Fe responsible for magnetic behavior. As stated by applicant at page 11 of the response filed 08/22/06, the instant claims do not include the amounts of iron distributed through the prior art material(s) to achieve magnetism, nor is there any reason/motivation for removing iron from the prior art compositions to arrive at the instant claims.

With respect to instant claims 14, 17-27 and 30, the 1.132 Declaration filed 08/22/06 corrects the deficiencies of the earlier filed 1.132 Declaration (03/27/06). Specifically, applicant has clearly set forth the detailed procedure used to produce each of the independently tested samples, as well as a complete discussion of the analytical techniques utilized during testing. The manufacturer's specification(s) and GD-MS analysis of the starting materials is also provided.

Applicant's description of "cycle" and "cyclic process" at pages 15-17 of the instant specification are noted. After consideration of the evidence as a whole, including the many factors discussed in detail in *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988), the examiner agrees applicant has demonstrated that the disclosure as filed (as evidenced by the submitted 1.132 Declaration) would have enabled the skilled artisan to make and use claimed invention.

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It should be noted that the instant claims are drawn to existing materials that exhibit novel properties. As acknowledged by applicant at pages 10-11 of the response filed 03/27/06:

The applicant has presented 14 working examples with detailed XRF analysis that showed each of the manufactured ingots contains a different elemental signature from its corresponding natural occurring metal state. **There is no basis to conclude that the result is explained by impurities or the transmutation of metals. The manufactured ingots are still the same starting material,** but exhibit different electronic state scans from the original precursor in the GMS, XRF, PIXE, and GDOES analysis. Confirmation of these analysis from third party companies for the copper ingot is attached as a 1.132 Declaration (emphasis added).

As is evident from the prosecution history of this application and the parent application(s), the instant application disclosure proposes unproven scientific theory that may be construed as contrary to commonly accepted theories regarding quantum mechanics and interactions between various forms of matter. The instantly proposed theory includes changing the atomic orbitals of matter, as well as the introduction and definition of the terms "zurn" and "isozurn". However, differences between the claimed materials and the prior art materials could be result of atomic interactions which may

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be described and predicted by the current and well-explored theories regarding the behavior of materials.

Allowance of the instant claims should not be construed as a validation by the United States Patent Office of applicant's unproved scientific theories. Applicant has demonstrated that the claimed materials (produced by specific heating and cooling operations under particular atmospheric conditions) are patentably different from the prior art of record. The provided 1.132 Declaration discloses third party confirmation of the claimed properties. The instant claims are enabled as the skilled artisan could follow the disclosed heating and cooling steps delineated by applicant in order to make and use the instantly claimed materials. Furthermore, the invention has at least one credible utility as disclosed in the specification and prior art. See, e.g., *Raytheon v. Roper*, 724 F.2d 951, 958, 220 USPQ 592, 598 (Fed. Cir. 1983), cert. denied, 469 U.S. 835 (1984).

The provisional obviousness-type double patenting rejections are withdrawn as the only remaining rejection(s). See MPEP 804.

Accordingly, the instant claims are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to

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avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Kopec whose telephone number is (571) 272-1319. The examiner can normally be reached on Monday - Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Mark Kopec  
Primary Examiner  
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MK

October 14, 2006